



DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510-AB32

Federal Government Participation in the Automated Clearing House

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY:

The Department of the Treasury, Bureau of the Fiscal Service (Service) is proposing to amend its regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Our regulation adopts, with some exceptions, the NACHA Operating Rules developed by NACHA – The Electronic Payments Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that NACHA has made to the NACHA Operating Rules since the publication of NACHA's 2009 ACH Rules book. These changes include amendments set forth in NACHA's 2010, 2011, 2012 and 2013 Operating Rules books.

DATES: Comments on the proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments on this rule, identified by docket FISCAL-FMS-2013-0002, should only be submitted using the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the Web site for submitting comments.
- Mail: Ian Macoy, Bureau of the Fiscal Service, 401 14th Street, SW, Room 400B, Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to the Service have been decommissioned.

Instructions: All submissions received must include the agency name (Bureau of the Fiscal Service) and docket number FISCAL-FMS-2013-0002 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You can download this proposed rule at the following website: <http://www.fms.treas.gov/ach>.

You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622-0990 for an appointment.

In accordance with the U.S. government's eRulemaking Initiative, the Service publishes

rulemaking information on www.regulations.gov. Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

FOR FURTHER INFORMATION CONTACT: Ian Macoy, Supervisory Financial Program Specialist, at (202) 874-6835 or ian.macoy@fms.treas.gov; or Natalie H. Diana, Senior Counsel, at (202) 874-6680 or natalie.diana@fms.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment related information among participating financial institutions. Part 210 incorporates the NACHA Operating Rules, with certain exceptions. From time to time we amend Part 210 in order to address changes that NACHA periodically makes to the NACHA Operating Rules or to revise the regulation as otherwise appropriate.

Currently, Part 210 incorporates the NACHA Operating Rules as set forth in the 2009 NACHA Operating Rules book. NACHA has adopted a number of changes to the NACHA Operating Rules since the publication of the 2009 NACHA Operating Rules book. We are proposing to incorporate in Part 210 most, but not all, of these changes.

We are requesting public comment on all the proposed amendments to Part 210.

II. Summary of Proposed Rule Changes

A. 2010 NACHA Operating Rules Book Changes

1. Authorization and Returns

This NACHA Operating Rules amendment revised the requirements for obtaining a Receiver's authorization for an ACH payment and modified the processes by which Receiving Depository Financial Institutions (RDFIs) handle Receivers' claims of unauthorized debits. Specifically, the amendment (1) clarified the requirements for authorization of ACH entries, adopting the language of Regulation E that an authorization must be "clear and readily understandable;" (2) clarified that a purported authorization that is not clear and readily understandable is not considered a valid authorization; (3) eliminated the requirement that Receiver's written statement regarding an unauthorized debit be made under penalty of perjury; (4) established minimum information requirements for and revised timing requirements related to the written statement; and (5) expanded the use of R39 (Improper Source Document) for duplicate check/check conversion payments. We are proposing to accept this amendment.

2. Stop Payments and Regulation E

This amendment revised specific language within the NACHA Operating Rules regarding the application and expiration of a stop payment order so as to re-align the NACHA Operating Rules with the requirements of Regulation E. The amendment (1) eliminated the six-month time period after which a stop payment order placed by a consumer lapses; (2) provided that, where the stop payment order applies to more than one debit entry, the order remains in effect until all such entries have been stopped; (3) provided that RDFIs may require, in cases where the Receiver desires to block all future payments related to a specific authorization/Originator, that the Receiver confirm in writing that the Receiver revoked the authorization; and (4) simplified the description of Return Reason Code R08 (Payment Stopped). We are proposing to accept this amendment.

3. Direct Access Registration

This amendment modified the NACHA Operating Rules to require Originating Depository Financial Institutions (ODFIs) to register their Direct Access status with NACHA, and imposed certain requirements in connection with registration of Direct Access status. We are proposing to accept this amendment.

4. Risk Management and Assessment

This amendment updated the NACHA Operating Rules to codify additional risk management, due diligence and monitoring practices that ODFIs must follow with respect to Originators and Third-Party Senders. We are proposing not to incorporate this amendment in Part 210, since the Federal government's origination of entries through the ACH Network does not involve the conventional roles of Originator/ODFI and does not present the risks that this amendment seeks to address.

B. 2011 NACHA Operating Rules Book Changes

1. Mobile ACH Payments

This rule established a framework for mobile-initiated ACH debit entries. It expanded the definition of Internet-Initiated Entries (WEB) to include ACH debits authorized or initiated via wireless networks. In addition, it applied all the provisions of the WEB SEC Code to mobile debit entries. The purpose of the rule was to provide clear information on how the NACHA Operating Rules apply to mobile payments and to create a more stable environment within which to develop payment products and services. We are proposing to accept this rule.

2. Elimination of the Opt Out Requirements of ARC and BOC Entries

This amendment eliminated the requirement that Originators of Accounts Receivable Entries (ARC) and Back Office Conversion Entries (BOC) establish and maintain procedures to

enable Receivers to opt out of check conversion activity. The amendment reflected the fact that opt out rates were generally 0.1 percent or lower, indicating that consumer concern about check conversion either did not exist or had dissipated over time. We are proposing to accept this amendment.

3. Collection of Return Fees

This rule amendment established a Return Fee Entry as a specific type of ACH entry, to be used only for the purpose of collecting return fees for certain ACH debits to consumer accounts that are returned for insufficient funds or other qualifying checks that are returned NSF/UCF. The rule allows Originators to obtain authorization for a Return Fee Entry by providing the Receiver/check writer with notice that conforms to the requirements of Regulation E.

Part 210 currently provides that agencies with authority to collect returned item services fees may do so by originating an ACH debit entry following notice to the Receiver. We are proposing to accept this rule change, which will enable agencies with authority to collect returned item fees by utilizing the Return Fee Entry.

4. Expanded use of the XCK Application

This amendment expanded the scope of the Destroyed Check Entry (XCK) application to permit its use for certain damaged checks that cannot be imaged, or for other check images that cannot be processed. The expanded scope allows use of XCK for (1) a check that is missing part of the MICR line but that can be sufficiently repaired to create an ACH debit; (2) a check that, in whole or in part, is unreadable, obscured or mutilated in a manner that prevents automated check processing or creating of an image that may be used to produce a “substitute check” under the Check 21 Act, but has an intact MICR line; and (3) a check that does not pass standard quality

tests for creation of an image that may be used to produce a substitute check under Check 21.

We are proposing to accept this rule change.

5. Recurring TEL

This amendment revised the definition of, and the general rule for, TEL Entries to allow both one-time (Single Entry) and recurring debit Entries authorized orally via the telephone.

Prior to the amendment, only Single Entries were permitted to be authorized via the telephone.

The amendment expanded the specific authorization language to address authorization requirements for recurring TEL Entries in conformance to the requirements of Regulation E.

Under the amendment, authorizations for recurring TEL Entries must meet the writing and signature requirements of Regulation E for preauthorized transfers, which can be done by conforming to the e-Sign Act. We are proposing to accept this rule change.

C. 2012 NACHA Operating Rules Book Changes

1. IAT Modifications and Refinements

Effective September 18, 2009, the NACHA Operating Rules were amended to require ODFIs and Gateway Operators to identify all international payment transactions transmitted via the ACH Network for any portion of the money trail as International ACH Transactions using a new Standard Entry Class Code (IAT). IAT transactions must include the specific data elements defined within the Bank Secrecy Act's (BSA) "Travel Rule" so that all parties to the transaction have the information necessary to comply with U.S. law, including the laws administered by OFAC. We accepted the IAT rule for Federal payments, except that we delayed the effective date for certain government transactions and excluded tax payments from the IAT rule.

Since that time, NACHA has made a number of changes clarify and enhance the Rules where appropriate to support more efficient processing of IAT Entries. We are proposing to

accept, except as to tax payments, all of these changes, which include the following:

- Minimum Description Standards for IAT Entries

Under the original IAT rule, the RDFI of an inbound IAT Entry to a consumer account was required to provide the consumer with certain descriptive information in accordance with the requirements of the NACHA Operating Rules and Regulation E. With the implementation of IAT, however, the minimum description standards within the NACHA Operating Rules were not modified to explicitly state that IAT Entries also contain information related to terminal city, terminal state, terminal identification code/location, and check serial number for certain types of payments, and that, when such information is present in an IAT Entry, it must be included on the consumer's bank statement. This amendment codified these expectations regarding IAT statement requirements within the NACHA Operating Rules.

- Gateway Notification of Rejected Inbound International Payment

This amendment established a requirement that a Gateway notify the intended RDFI when an inbound international payment has been blocked and/or rejected because the origination of an IAT Entry for such a transaction would violate U.S. law. The amendment requires a Gateway that rejects an inbound payment transaction to provide the intended RDFI with the names and complete addresses of both the Originator and the Receiver, the date of the payment transaction, and the dollar amount of the intended payment. The Gateway must provide such information to the RDFI within five Banking Days of blocking or rejecting the payment.

- Transaction Type Code to Identify Remittances

This amendment expanded the list of code values for use within the Transaction Type Code field in the First IAT Addenda Record to identify international payments originated by a natural person through a remittance product or service. The amendment added a new code for

remittances initiated by a natural person to facilitate the identification and tracking of such payments.

- IAT Entries and the Effect of Illegality

This amendment clarified that a Participating Depository Financial Institution (DFI) must process each IAT Entry in accordance with all requirements of the NACHA Operating Rules. A DFI is excused from its obligation to comply with specific requirements under the NACHA Operating Rules only when the processing of an IAT Entry would cause the DFI to be in violation of U.S. law. The DFI must, therefore, comply with its obligations under the NACHA Operating Rules unless it identifies an IAT as a suspect transaction. For domestic RDFIs that receive inbound IATs, these obligations include the timely provision of funds and the timely transmission of returns.

- Clarification of Rules Exceptions for IAT Entries

This amendment clarified the conditions and circumstances under which specific provisions of the NACHA Operating Rules do not apply to certain IAT Entries. These changes were not substantive in nature, but rather more accurately reflect the application of the provisions to actual IAT processing.

Exceptions for Outbound IAT Entries: This amendment revised, as appropriate, the list of provisions that do not apply to Outbound IAT Entries and clarified that certain functional processes (e.g., Prenotifications, NOCs, reversals, etc.) apply to Outbound IAT Entries only to the extent that they are supported by the laws and payment system rules of the foreign receiving country.

This amendment also incorporated clearer Originator/ODFI obligations with respect to authorization requirements for the origination of Outbound IAT Entries, noting

that, while such payments must be authorized under the *Rules*, the form and content of such an authorization are governed by the laws and payment system rules of the foreign receiving country. The amendment also clarified that the Gateway for an Outbound IAT Entry assumes specific responsibilities and warranties of an RDFI, but that the *Rules* do not govern the Gateway's rights and obligations with respect to the foreign Receiver of the Outbound IAT Entry.

Exceptions for Inbound IAT Entries: This amendment incorporated a new subsection that identifies exceptions to the NACHA Operating Rules for Inbound IAT Entries, listing NOCs as applicable to Inbound IAT Entries only to the extent that NOCs are supported by the laws and payment system rules of the foreign originating country. However, because accurate payment information is critical to the successful processing of any ACH Entry (including any IAT Entry), this amendment also requires a Gateway that receives an NOC related to an Inbound IAT to pass the correct payment information to its contact in the foreign country (i.e., the Foreign Gateway or the Originator in the foreign country). Unlike the domestic NOC process, the Gateway (as ODFI) would have no obligation to ensure that future Inbound IAT Entries bear the corrected information.

- Required Gateway Agreements and Authorizations for Outbound IAT Entries

This amendment requires a Gateway to have an agreement in place with either the ODFI or its own customer (i.e., its own account holder or another party) before transmitting Outbound IAT Entries internationally. Similarly, this amendment also requires the Gateway to obtain authorization from either the ODFI or its own customer (whichever has the agreement with the Gateway) to (i) transmit outbound IAT Entries, (ii) arrange for settlement of such Entries with the Foreign Gateway, and (iii) arrange for further transmission of such Entries to the foreign

receiving financial institution and settlement of such payments to the foreign Receiver's account. The rule also expands the scope of Return Reason Code R81 (Non-Participant in IAT Program) to facilitate the return of an IAT Entry where these required agreements/authorizations are not in place.

Prior to this amendment, the requirements for these specific agreements and authorizations by a Gateway did not address alternative international payments models in which the Gateway's own account holder or customer (rather than the ODFI) has established an arrangement and entered into an agreement with the Gateway to move funds out of the U.S. for further credit to a foreign account.

- Return of Outbound IAT Entry by Foreign Gateway – Transmission of ACH Return by Gateway to ODFI

This amendment clarified the timeframe for a Gateway to transmit an ACH Return Entry for any Outbound IAT Entry that was properly returned to it by a Foreign Gateway.

- Identification of the Foreign Funding Financial Institution within an IAT Entry

This amendment revised the descriptions of several fields in the Fourth IAT Addenda Record to clarify that this information, when contained in an Inbound IAT Entry, must identify the foreign financial institution that provides the funding for the transaction.

- Clarification of Originator Identification Field

This amendment revised the description of the Originator Identification Field to address how the field must be populated in various circumstances. Three specific conditions addressed by this change are:

Originators Not Established Under the Laws of a State or the United States: The NACHA Operating Rules require the Originator Identification field to contain an

identification number defined by Section 326 of the USA PATRIOT Act for any Originator that is not a natural person and is not established or organized under the laws of a State or the United States. However, the U.S. Treasury has not defined such a numbering scheme, leaving a gap within the *Rules* as to how to identify a foreign Originator within the ACH record. To close this gap, this amendment established the same methodology used in the wire transfer system, which defines the DDA account number at the foreign financial institution as the Originator Identification Number

Use of Leading Characters as Part of the Originator Identification Number: This change explicitly permits Originators and ODFIs to include a one-digit alphameric code in the first position of the Originator Identification Field to allow for further identification and handling of the payment by the ODFI.

Identification of Third-Party Senders in IAT Entries: This amendment broadened the definition of the Originator Identification Field to permit inclusion of the tax identification number of either the Originator or the Third-Party Sender when the ODFI has the contractual relationship with the Third-Party Sender rather than the Originator of the Entry.

- Return Reason Codes R80 – R84: Clarification of Use for Outbound IAT Entries Only

This amendment revised the descriptions of Return Reason Codes R80 – R84 (which are used solely by a Gateway) to clarify that these codes are applicable only to Outbound IAT Entries.

- Expansion of Return Reason Code R84 (Entry Not Processed by Gateway Operator)

This amendment broadened the scope of Return Reason Code R84 (Entry Not Processed by Gateway) to accommodate a Gateway's return of an Outbound IAT Entry when it is unable to

process the transaction because the payment system in the foreign receiving country does not support a particular rule or function defined as part of the domestic ACH Network.

2. Minor Impact Issues

These NACHA Operating Rules changes include editorial changes to grammar, clarifications of intent, changes that involve minor software modifications and so forth, including the following:

- Modification of the Definition of XCK Ineligible Items
- Clarification of Recurring TEL Authorization Retention Requirements
- Correction to payment Type Code for TEL Entries
- Correction to Definition of Improper ARC and BOC Debit Entries

We are proposing to accept all the foregoing minor impact changes.

3. Risk Management Enhancements

This amendment extended the deadline by which an audit of compliance with the NACHA Operating Rules must be completed. We are proposing not to accept this amendment because the compliance and audit requirements of the NACHA Operating Rules are not incorporated in Part 210.

4. Pain Points in the Rules – Phase Two

- Elimination of WEB Exposure Limits. This amendment removed the requirement that ODFIs establish separate WEB exposure limits for Originators and Third-Party Senders. This amendment does not affect Federal agencies because the WEB exposure limits are not incorporated in Part 210.
- Modification of Accounts Receivable (ARC) Entries to Permit the Conversion of Checks Tendered in Person for the Payment of a Bill at a Manned Location. This amendment

modified the scope of the ARC application to permit the conversion of checks tendered in person for the payment of a bill at a manned location. The rule also requires Originators accepting bill payments in this in-person environment to provide a copy of the authorization notice to the Receiver at the time of the transaction. We are proposing to accept this rule change.

D. 2013 NACHA Operating Rules Book Changes

1. IAT Modifications

Several amendments to the IAT rule were enacted in the 2013 NACHA Operating Rules book. We are proposing to adopt all the amendments, as follows:

- Use of Return Reason Code R16 to Identify OFAC-Related Returns

This amendment expanded the title and description of Return Reason Code R16 (Account Frozen) to accommodate this code's use for an RDFI's return of an Entry based on an instruction from OFAC.

- Return Reason Code and Change Code for Gateway Use with Incorrectly-Coded International Payments

This amendment established two new codes – one Return Reason Code and one Change Code – for use by Gateways to advise ODFIs and Originators that funds related to a domestically-coded Entry (i.e., PPD, CCD, etc.) are being moved out of the country and that the Entry should have been formatted as an IAT Entry. LIST NEW CODES The new codes enable the Gateway to process or return the payment, depending on its risk tolerance, while conveying critical payment information back to the ODFI.

- Corrected Data for IAT Entries – NOC Code Descriptions

This amendment corrected the descriptions of Change Codes C04 (Incorrect Individual

Name/Receiving Company Name) and C09 (Incorrect Individual Identification Number) as they relate to IAT Entries.

- ODFI Warranties – Compliance with Foreign Payment System Rules

This amendment narrowed the scope of the ODFI warranty of compliance with foreign payment system rules for outbound IAT entries to focus only on authorization of the entry when such authorization is required by the laws or payment system rules of the receiving country.

2. Stop Payments

Effective September 20, 2013, the NACHA Operating Rules will be amended to incorporate two additional conditions under which a stop order relating to a debit entry to a non-Consumer account would lapse. Under the amendment, a stop order would expire if withdrawn by the Receiver or if the debit entry to which the order relates is returned. The amendment, which we are proposing to accept, incorporates current industry practice into the NACHA Operating Rules.

3. Originator Obligations with respect to Notifications of Change for Single Entries

Effective September 20, 2013, the NACHA Operating Rules will be amended to make optional the Originator's response to Notifications of Change for Single Entry payments. Specifically, Originators will no longer be required to make changes requested within Notifications of Change identified as Single Entry items. We are proposing to accept this amendment.

4. Health Care Payments via ACH

Effective September 20, 2013, the NACHA Operating Rules will be amended to support health plans' and health care providers' use of the ACH Network by adopting processing enhancements that address requests made by the health care industry, as well as specific

transaction identification and formatting requirements for health care claim payments. The amendments operate in combination with health care industry operating rules for electronic funds transfers (EFT) and electronic remittance advice (ERA) developed by the Council on Affordable Quality Healthcare (CAQH) Committee on Operating Rules for Information Exchange (CORE), in collaboration with NACHA, and the designation by the Department of Health and Human Services (HHS) of the CCD entry as the health care EFT standard transaction. Taken together, these sets of rules provide for the efficient and standardized electronic payment of health care claims, and the reassociation of the payments with health care remittance information (“reassociation”), resulting in administrative simplification by health plans and health care providers.

The NACHA Rule amendments will enable financial institutions to be ready to send and receive health care CCD entries for health plans and health care providers, which in turn will be working toward implementation of HHS’ January IFC and August IFC by their January 1, 2014 compliance deadline. Originators and ODFIs could begin using the transaction identification and formatting standards within this Rules earlier than the effective date; use of the standards will not cause any processing problems for RDFIs and Receivers. Similarly, RDFIs that do not do so already could begin offering an electronic option for the delivery or provision of payment related information as soon as they are ready.

The five major components of the Health Care EFT rule changes are as follows:

- Unique Identification of Health Care EFTs
- Additional Formatting Requirements for Health Care EFT Transactions
- Delivery of Payment Related Information (Reassociation Number)
- Addition of New EDI Data Segment Terminator

- Health Care Terminology within the *NACHA Operating Rules*

We are proposing to accept all of the NACHA Operating Rules changes related to Health Care EFTs.

5. ACH Security Framework

This amendment to the NACHA Operating Rules created a Security Framework aimed at protecting the security and integrity of certain ACH data throughout its lifecycle. The Security Framework establishes minimum data security obligations for ACH Network participants to protect ACH data within their purview by:

- Requiring non-consumer Originators, Participating DFIs, Third Party Service Providers, and Third-Party Senders to establish, implement, and, as appropriate, update security policies, procedures, and systems related to the initiation, processing, and storage of Entries. These policies, procedures, and systems must:
 - Protect the confidentiality and integrity of Protected Information;
 - Protect against anticipated threats or hazards to the security or integrity of Protected information; and
 - Protect against unauthorized use of Protected Information that could result in substantial harm to a natural person
- Requiring each Participating DFI, Third-Party Service Provider, and Third-Party Sender to verify, as part of its annual ACH Rules Compliance Audit, that it has established, implemented, and updated the data security policies, procedures, and systems required by the Security Requirements rules.

- Requiring ODFIs to use a commercially reasonable method to establish the identity of each non-Consumer Originator or Third-Party Sender with which the ODFI enters into an Origination Agreement.

We are proposing not to accept the Security Framework requirements in Part 210 because Part 210 does not incorporate the rules compliance and audit requirements that the Security Framework expands. Federal agencies are subject to various Federal requirements governing data and systems security and the protection of sensitive information, such that additional NACHA Operating Rules requirements would be unduly burdensome and unnecessary.

6. Data Passing (Risk Management)

This amendment prohibited sharing of certain customer information by Originators, Third-Party Service Providers and ODFIs for the purpose of initiating debit Entries that are not covered by the original authorization. We are proposing to accept this amendment.

7. ODFI Return Rate Reporting (Risk Management)

This amendment reduced the ODFI Return Rate Reporting period from 60 days to 30 days for reducing return rates below the return rate threshold before initiation of a NACHA Operating Rules enforcement proceeding. This amendment does not affect Federal agencies because Part 210 does not incorporate the NACHA Operating Rules enforcement provisions.

8. Incomplete Transactions (Risk Management)

This amendment allows the return of a debit Entry to a Consumer Account within 60 days of the Settlement Date for an “Incomplete Transaction,” which is defined as a transaction for which a Third Party Sender debits a consumer’s account to collect funds, but does not complete the corresponding payment to the party to which payment is owed. We are proposing to accept this amendment.

III. Section-by-Section Analysis

In order to incorporate in Part 210 the NACHA Rule changes that we are accepting, we are replacing references to the 2009 ACH Rules book with references to the 2013 NACHA Operating Rules and Guidelines book. For those NACHA Rule changes that we are not incorporating (specifically, amendments to the rules enforcement provisions), Part 210 already provides that the rules enforcement provisions of Appendix 11 of the NACHA Operating Rules do not apply to Federal agency ACH transactions. See § 210.2(d)(3) The reference to Appendix 11 is being replaced with a reference to Appendix 10 to reflect numbering changes to the rule.

§ 210.2

We are proposing to amend the definition of “applicable ACH Rules” at § 210.2(d) to reference the rules published in NACHA’s 2013 Rules book rather than the rules published in NACHA’s 2009 Rules book. The definition has been updated to reflect the reorganization and renumbering of the NACHA Operating Rules. The changes to the definition are not substantive except:

(1) The deletion of the reference to ACH Rule 2.11.2.3, which required ODFIs to establish exposure limits for Originators of Internet-initiated debit entries. That requirement has been eliminated by NACHA;

(2) The exclusion from the definition of Section 2.2, which generally requires ODFIs to enter into agreements with Originators and Third-Party Senders and perform certain due diligence with respect to those entities; and

(2) The elimination of a temporary exclusion from the IAT rules for debit entries

originated by agencies and for certain entries delivered to Mexico, Canada and Panama through the FedGlobalSM ACH Payment Service. Those references have been deleted because the temporary exclusion has now expired.

We are proposing to amend the definition of “Service” at § 210.2(p) to reflect the renaming of the Financial Management Service to the Bureau of the Fiscal Service

§ 210.3(b)

We are proposing to amend § 210.3(b) by replacing the references to the ACH Rules as published in the 2009 Rules book with references to the ACH Rules as published in the 2013 NACHA Operating Rules and Guidelines book.

§ 210.6

References to ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2 and 8.7.2 have been replaced by references to Subsections 2.4.4, 2.8.4, 4.3.5, 2.92, 3.2.2, and 3.13.3 to reflect re-numbering of the NACHA Operating Rules.

In subsection (g), references to ACH Rules 2.1.2 and 3.12 have been replaced by references to Subsections 2.3.2.2 and 2.5.10.1 to reflect re-numbering of the NACHA Operating Rules.

Subsection (h), which addressed return item service fees, has been revised. This subsection currently provides that an agency that had authority to collect returned item service fees can do so by originating an ACH debit entry to collect a one-time service fee in connection with an ARC, POP or BOC entry that is returned due to insufficient funds, provided a notice was given to the receiver. Prior to 2011, the NACHA Operating Rules did not permit return item fees

to be collected without the receiver's written authorization. In 2011, the NACHA Operating Rules were amended to include a new Entry type, Return Fee Entry, that may be used to collect return fees for certain ACH debits and qualifying checks that are returned NSF, subject to the provision of notice to the Receiver [ACH Rule 2.14]. Subsection (h) is revised to reflect this change.

§ 210.8

The references to ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 8.7.2 have been replaced with references to ACH Rules Subsections 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3 to reflect re-numbering of the ACH Rules. In addition, the regulatory citation to Regulation E has been updated to reflect its re-codification at 12 CFR Part 1005.

IV. Procedural Analysis

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make these rule easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a "significant regulatory action" as

defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule imposes on the Federal government a number of changes that NACHA, The Electronic Payments Association, has already adopted and imposed on private sector entities that utilize the ACH. The proposed rule does not impose any additional burdens, costs or impacts on any private sector entities, including any small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and
Incorporation by reference

Words of Issuance

For the reasons set out in the preamble, we propose to amend 31 CFR part 210 as follows:

PART 210 - FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335,
and 3720.

2. Revise § 210.2, paragraph (d) to read as follows:

§ 210.2 Definitions.

* * * * *

(d) Applicable ACH Rules means the ACH Rules with an effective date on or before September 21, 2013, as published in “2013 NACHA Operating Rules and Guidelines: A Complete Guide to Rules Governing the ACH Network” and supplements thereto, except:

(1) Subsections 1.2.2, 1.2.3, 1.2.4, 1.2.5 and 1.2.6; Appendix Seven; Appendix Eight; Appendix Nine and Appendix Ten (governing the enforcement of the ACH Rules, including self-audit requirements, and claims for compensation);

(2) Section 2.10 and Section 3.6 (governing the reclamation of benefit payments);

(3) The requirement in Appendix Three that the Effective Entry Date of a credit entry be no more than two Banking Days following the date of processing by the Originating ACH Operator (see definition of “Effective Entry Date” in Appendix Three);

(4) Section 2.2 (setting forth ODFI obligations to enter into agreements with, and perform risk management relating to, Originators and Third-Party Senders) and Section 1.6 (Security Requirements);

(5) Section 2.17 (requiring reporting and reduction of high rates of entries returned as unauthorized); and

(6) The requirements of ACH Rule 2.11 (International ACH Transactions) shall not apply to entries representing the payment of a Federal tax obligation by a taxpayer.

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(p) Service means the Bureau of the Fiscal Service, Department of the Treasury.

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3. Revise § 210.3, paragraph (b) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) Incorporation by reference -- applicable ACH Rules.

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 21, 2013, as published

in the "2013 NACHA Operating Rules and Guidelines: A Complete Guide to Rules Governing the ACH Network," and supplements thereto. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "2013 NACHA Operating Rules and Guidelines" are available from NACHA - The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20002; and the Bureau of the Fiscal Service, 401 14th Street, S.W., Room 400A, Washington, D.C. 20227.

- (2) Any amendment to the applicable ACH Rules that is approved by NACHA – The Electronic Payments Association after September 21, 2013 shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the *Federal Register*. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the *Federal Register* notice expressly accepting such amendment.

4. Revise § 210.6 to read as follows:

§ 210.6 Agencies.

Notwithstanding any provision of the ACH Rules, including Subsections 2.4.4, 2.8.4, 4.3.5, 2.92, 3.2.2, and 3.13.3, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(c) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an RDFI or ACH association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by subpart B of this part. An agency shall not be liable to any ACH association.

(e) *Acquittance of the agency.* The final crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(f) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

(g) *Point-of-purchase debit entries.* An agency may originate a Point-of-Purchase (POP) entry using a check drawn on a consumer or business account and presented at a point-of-purchase. The requirements of ACH Rules Subsections 2.3.2.2 and 2.5.10.1 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted the notice required by the ACH Rules and has provided the Receiver with a copy of the notice.

(h) *Return Fee Entry.* An agency that has authority to collect returned item service fees may do so by originating a Return Fee Entry if the agency provides notice to the Receiver in accordance with the ACH Rules.”

5. Amend § 210.8 by revising paragraphs (a) and (b) to read as follows:

§ 210.8 Financial institutions.

(a) *Status as a Treasury depository.* The origination or receipt of an entry subject to this part does not render a financial institution a Treasury depository. A financial institution shall not advertise itself as a Treasury depository on such basis.

(b) *Liability.* Notwithstanding ACH Rules Subsections 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 1005, or the Electronic Funds Transfer Act, 12 U.S.C. 1693 et seq.

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Dated: December 3, 2013

Richard L. Gregg

Fiscal Assistant Secretary

[FR Doc. 2013-29202 Filed 12/11/2013 at 8:45 am; Publication Date: 12/12/2013]